

Amendments to Senate Bill No. 122
1st Reading Copy

Requested by Senator Donald Steinbeisser

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 16, 2009 (9:52am)

1. Page 5, line 2.

Strike: "a person"

Insert: "an entity"

2. Page 5, line 10.

Strike: "a person"

Insert: "an entity"

3. Page 5, line 17.

Following: " ; "

Insert: "or"

4. Page 5, lines 18 through 20.

Strike: subsection (25)(b)(ii) in its entirety

Renumber: subsequent subsection

5. Page 5, line 23 through page 6, line 2.

Strike: subsection (25)(c) in its entirety

6. Page 6.

Following: line 10

Insert: "(29) "Real estate brokerage activity" means an activity that involves offering or providing real estate brokerage services to the public, including:

(a) acting as a real estate broker or real estate salesperson for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating on behalf of a party a portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property except in connection with providing financing for the transaction;

(d) engaging in an activity requiring licensure as a real estate salesperson or real estate broker as provided in Title 37, chapter 51; or

(e) offering to engage in an activity or to act in any capacity described in this subsection (29)."

Renumber: subsequent subsections

7. Page 7, line 25 through line 26.

Strike: "3(29)(a)(i)," on line 25 through "(29)(a)(iii)" on line 26

Insert: "3(30)(a)(i), (30)(a)(ii), or (30)(a)(iii)"

8. Page 7.

Following: line 26

Insert: "(2) an entity described in [section 3(30)(a)(i), (30)(a)(ii), or (30)(a)(iii)];"

ReNUMBER: subsequent subsections

9. Page 7, line 28.

Following: "member"

Insert: "of the individual"

10. Page 7, line 30.

Strike: "or"

11. Page 8, line 4.

Strike: "."

Insert: ";

12. Page 8.

Following: line 4

Insert: "(6) an individual who performs only real estate activities and is licensed as provided in Title 37, chapter 51, unless the individual is compensated by a mortgage lender, a mortgage broker, a mortgage loan originator, or an agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

(7) the following entities:

(a) an agency of the federal government or a state or a municipal government;

(b) an entity that is an owner of residential real property who offers credit secured by a contract of sale, mortgage, or deed of trust on the property sold;

(c) an entity that makes a loan to an employee of that entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;

(d) an entity engaged solely in nonresidential or commercial real estate lending;

(e) an entity that does not make more than five mortgage loans with the entity's own funds for the entity's own investment during any 12-month period and that does not represent to the public in any manner that the entity is in the mortgage lending business;

(f) a qualified plan under 26 U.S.C. 401(i) or (k) if the qualified plan makes mortgage loans only to the participants in

the qualified plan;

(g) the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association; and

(h) a corporation qualified under 26 U.S.C. 501(c)(3) that is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business if the corporation qualified under 26 U.S.C. 501(c)(3) makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals."

13. Page 8, line 7 through line 8.

Strike: "The" on line 7 through "exemption." on line 8

14. Page 8, line 19.

Following: "license"

Insert: "-- duty to investigate complaints"

15. Page 9, line 7 through line 9.

Strike: subsection (3) in its entirety

Insert: "(3) An aggrieved consumer or member of the public may file a complaint against a licensed or unlicensed person in writing with the department on a form provided by the department. The department shall investigate any complaint alleging a violation of [sections 1 through 46]."

16. Page 9, line 27.

Following: "location"

Insert: "that originates a residential mortgage loan"

17. Page 10, line 14 through line 20.

Strike: subsection (9) in its entirety

Insert: "(9) If a mortgage loan originator separates from employment with an entity licensed under [sections 1 through 46], the employing entity shall return the license to the department within 5 business days after the separation. If a designated manager separates from employment with an entity licensed under [sections 1 through 46], the employing entity shall name a new designated manager within 15 days of the separation.

(10) An entity that is licensed under [sections 1 through 46] shall notify the commissioner immediately and in writing within 1 business day of the occurrence of any of the following significant developments:

(a) the entity's filing for bankruptcy or reorganization;

(b) any filing of a criminal indictment that is related to

the entity, including but not limited to the handling or reporting of money received or instruments sold;

(c) the notification of the entity that in another state the entity has been denied a license, issued a cease and desist order, involved in license suspension or revocation orders, or subject to other formal or informal regulatory action. The notification under this subsection (10)(c) must include a description of the reasons for the action taken in another state.

(d) the notification of the initiation against the entity of any action by the attorney general of this state for violations under Title 30, chapter 14, or by the attorney general in any other state for violations of consumer protection laws similar to those in Title 30, chapter 14. The notification under this subsection (10)(d) must include a description of the charges.

(e) the expiration, termination, or default of an entity whether the default is technical or otherwise involving any existing line of credit or warehouse credit agreement of the entity;

(f) the suspension or termination of the entity's status as an approved seller or joint seller and servicer by the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association;

(g) an exercise of recourse rights by the entity's investors or subsequent assignees of mortgage loans if the mortgage loans that are the subject of the investor or assignee action in aggregate exceed the entity's net worth exclusive of real property and fixed assets;

(h) the initiation of a trustee process or any other form of attachment on any of the entity's assets; or

(i) the existence of negative balances exceeding \$100 in any operating account of the entity at any time or the return of checks written by the entity exceeding \$100 for insufficient funds.

(11) An entity that is licensed under [sections 1 through 46] shall notify the commissioner immediately and in writing within 5 business days of the occurrence of any of the following significant developments:

(a) the filing for bankruptcy or the reorganization of any of the entity's officers, directors, principal stockholders, or affiliates; or

(b) the criminal felony indictment or conviction of any of an entity's officers, directors, principal stockholders, or affiliates.

(12) An entity that is licensed under [sections 1 through 46] shall notify the nationwide mortgage licensing system and registry within 5 business days of the occurrence of any of the following:

(a) the filing of a criminal indictment that is related in any way to the entity, including but not limited to the handling or reporting of money received or instruments sold;

(b) the notification of the entity that in another state the entity has been denied a license, issued a cease and desist order, involved in license suspension or revocation orders, or subject to other formal or informal regulatory action. The notification under this subsection (12)(b) must include a description of the reasons for the action taken in another state.

(c) the notification of the initiation against the entity of any action by the attorney general of this state for violations under Title 30, chapter 14, or by the attorney general in any other state for violations of consumer protection laws similar to those in Title 30, chapter 14. The notification under this subsection (12)(c) must include a description of the charges."

18. Page 11, line 1.

Strike: "(1)"

19. Page 11, line 4 through line 8.

Strike: subsection (2) in its entirety

20. Page 11, line 12.

Following: "file"

Strike: ", in a" through "by rule,"

21. Page 12, line 3.

Strike: "independent contractor"

Insert: "exclusive agent"

22. Page 12, line 6.

Following: "coverage for"

Strike: "a"

Insert: "each"

23. Page 12, line 6 through line 7.

Following: "originator" on line 6

Strike: "in an" on line 6 through "(4)" on line 7

Insert: "as required by this section"

24. Page 12, line 8 through line 9.

Strike: "and the commissioner" on line 8 through "by rule" on line 9

25. Page 12, line 10 through line 11.

Strike: subsection (4) in its entirety

Insert: "(4) Licensees shall continuously maintain a surety bond as provided in this section.

(5) (a) A mortgage broker or mortgage loan originator working for a mortgage broker licensed under [sections 1 through 46] shall file with the commissioner a surety bond in a principal

amount of not less than \$15,000 or more than \$100,000 based on the dollar volume of residential mortgage loans originated in Montana.

(b) The name on the application and on the surety bond must match exactly.

(c) The amount of the surety bond is to be determined from the information submitted in the annual call report or annual license renewal application. The amount of the surety bond required for the dollar value of Montana loans is as follows:

Dollar Value of Montana Loans	Amount of Surety Bond
\$0 to \$10,000,000	\$15,000
\$10,000,001 to \$25,000,000	\$25,000
\$25,000,001 to \$50,000,000	\$35,000
\$50,000,001 to \$75,000,000	\$50,000
\$75,000,001 to \$100,000,000	\$75,000
\$100,000,001 and above	\$100,000

(6) (a) A mortgage lender or mortgage loan originator working for a mortgage lender licensed under [sections 1 through 46] shall file with the commissioner a surety bond in a principal amount of not less than \$25,000 or more than \$150,000 based on the dollar volume of residential mortgage loans made in Montana.

(b) The entity name on the application and on the surety bond must match exactly.

(c) The amount of the surety bond is to be determined from the information submitted in the annual call report or annual license renewal application. The amount of the surety bond required for the dollar value of Montana loans is as follows:

Dollar Value of Montana Loans	Amount of Surety Bond
\$0 to \$10,000,000	\$25,000
\$10,000,001 to \$25,000,000	\$35,000
\$25,000,001 to \$50,000,000	\$50,000
\$50,000,001 to \$75,000,000	\$75,000
\$75,000,001 to \$100,000,000	\$100,000
\$100,000,001 and above	\$150,000

(7) An entity that holds a dual license as a mortgage broker and a mortgage lender shall maintain surety bonds for the amounts required in both subsections (5) and (6).

(8) A surety bond must be used for the recovery of expenses, fines, and fees levied by the department or for losses or damages incurred by borrowers or consumers as the result of noncompliance with [sections 1 through 46] or with rules adopted to implement [sections 1 through 46] if the noncompliance is by the employees of the entity licensed under [sections 1 through 46] or by the entity itself.

(9) A surety bond is payable to the department when an entity licensed under [sections 1 through 46] or any of the entity's employees fail to comply with any provision of [sections 1 through 46] or any rule adopted to implement [sections 1

through 46]. The surety bond must be issued by an insurance company authorized to do business in this state.

(10) A copy of the surety bond, including each rider and endorsement executed subsequent to the effective date of the bond, must be filed with the department within 10 days of the execution of the bond.

(11) The surety bond must contain a clause requiring the insurance company to notify the department at least 30 days prior to the cancellation of the surety bond for any reason.

(12) If an entity licensed under [sections 1 through 46] or the issuer of the surety bond cancels the surety bond, the entity shall inform the department of the cancellation in writing by certified mail and provide a new surety bond to the department.

(13) If the department is notified that a surety bond has been canceled and the entity licensed under [sections 1 through 46] has not supplied a new surety bond to the department by the date of the cancellation, the commissioner may suspend the entity's license until the department receives a new, acceptable surety bond.

(14) Each surety bond is subject to the filing of a claim as provided in subsection (8) during the term of the license.

(15) Borrowers receive priority over the state and any other person who suffers loss by reason of a violation of [sections 1 through 46] or a rule adopted pursuant to [sections 1 through 46]. The state and other third parties may receive a distribution pursuant to a valid claim against the remainder of the bond. For claims made by a person or entity that is not a borrower, a final judgment may not be entered earlier than 180 days after the date that a claim is filed.

(16) The obligation to maintain the bond is continuous, whether the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified in any manner including increases or decreases in the penal sum. The surety may not be required to pay out an aggregate or cumulative amount that exceeds the penal sum on the face of the bond. The penal sum or a portion of the penal sum may not at two or more points in time be added together to determine the surety's liability."

Renumber: subsequent subsections

26. Page 15, line 30.

Strike: subsection (2) in its entirety

Insert: "(2) The commissioner may by order vacate an automatic revocation of a license if the automatic revocation is for failure to renew a license and enter a new order that the license lapsed because of a failure to renew."

27. Page 18, line 3.

Following: "solicitations,"

Insert: "and"

28. Page 18, line 3 through line 4.

Following: "websites"

Strike: ", and any" on line 3 through "rule" on line 4

Insert: "The unique identifier need not be shown on promotional items, including but not limited to pens or coffee cups."

29. Page 18, line 20.

Strike: "8"

Insert: "12"

30. Page 18, line 21.

Strike: "8"

Insert: "12"

31. Page 19, line 27.

Following: "fees"

Insert: "commensurate with the period of transition"

32. Page 20, line 1.

Strike: "(1)"

33. Page 20, line 4 through line 7.

Strike: subsections (2) and (3) in their entirety

34. Page 20, line 20 through line 21.

Strike: subsection (4) in its entirety

35. Page 21, line 16 through line 22.

Strike: subsections (7) and (8) in their entirety

Insert: "(7) All checks for escrow or trust funds must be made payable to the mortgage broker or mortgage lender entity."

36. Page 21, line 29 through line 30.

Following: "shall," on line 29

Strike: "as" on line 29 through "rule" on line 30

Insert: "at the licensee's election"

37. Page 23, line 9.

Strike: "(1)"

38. Page 23, line 18.

Strike: subsection (2) in its entirety

39. Page 27, line 25 through line 27.

Strike: "in accordance" on line 25 through "inspection" on line 27

Insert: "billed to the licensee, including expenses necessary for

travel out of state to conduct an investigation"

40. Page 27, line 28 through line 29.

Strike: "The fees" on line 28 through "investigation." on line 29

41. Page 29, line 8.

Strike: "as established" through "commissioner"

42. Page 30, line 26 through line 27.

Strike: subsection (2) in its entirety

Renumber: subsequent subsections

43. Page 34, line 13.

Strike: subsection (8) in its entirety

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